

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ALLANNA WARREN,
Plaintiff,

v.

DOLLAR TREE,
Defendant.

Case No. 2:23-cv-01377-APG-EJY

ORDER

Pending before the Court is Defendant's Motion to Stay Discovery. ECF No. 37. The Court has considered the Motion and Plaintiff's Response. ECF No. 40. Because the Court grants the Motion, the Court does not wait for the Reply.

Courts have broad discretionary power to control discovery, including the decision to allow or deny discovery. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). Rule 1 of the Federal Rules of Civil Procedure guides the Court's exercise of discretion to stay discovery with an eye toward ensuring a "just, speedy, and inexpensive determination of every action." *Long v. Gamo Outdoor S.L.U.*, Case No. 2:22-cv-00670-JAD-DJA, 2022 WL 2819662, at *2 (D. Nev. July 18, 2022). With Rule 1 as its prime directive, this Court must decide whether it is more just to speed the parties along in discovery while a dispositive motion is pending or to delay discovery to accomplish the inexpensive determination of the case. *Turner Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997); Fed. R. Civ. P. 26(c)(1) (court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including forbidding disclosure or discovery). To decide whether a stay of discovery is warranted pending the outcome of a dispositive motion, the Court should consider: (1) whether the motion is "potentially dispositive of the entire case or at least dispositive of the issue on which discovery is sought," and (2) "whether the pending potentially dispositive motion can be decided without additional discovery." *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 503 (D. Nev. 2013); see also, e.g., *Klaizner, v. Ditech Financial LLC*, Case No. 2:16-

1 cv-00414-GMN-CWH, 2016 WL 3176579 (D. Nev. June 2, 2016). In applying this two-pronged
 2 test, courts take a “preliminary peek” at the merits of the pending dispositive motion to assess
 3 whether a stay is warranted. *Tradebay, LLC, v. Ebay, Inc.*, 278 F.R.D. 597, 603 (D. Nev. 2011);
 4 *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 582-83 (D. Nev. 2013). The court’s preliminary
 5 peek is not intended to prejudge the outcome of the pending dispositive motion; it merely evaluates
 6 whether an order staying discovery is warranted. *Tradebay*, 278 F.R.D. at 603.

7 Here, a preliminary peek at Defendant’s Motion to Dismiss (ECF No. 9) shows Plaintiff’s
 8 Complaint is directed at entities that are not parties to this action nor do they have any relation to
 9 Dollar Tree. These entities include, without limitation, the Sparks and Las Vegas Metropolitan
 10 Police Departments. Plaintiff is currently litigating a separate case against those entities. *Warren v.*
 11 *Sparks Police Department*, et al., Case No. 2:23-cv-00065-GMN-DJA (the “Sparks Case”). Further,
 12 Plaintiff’s first cause of action under Nev. Rev. Stat. § 41.1395 will be dismissed because the statute
 13 does not create an independent cause of action. Plaintiff’s second cause of action for alleged
 14 intentional infliction of emotional distress (“IIED”) and third cause of action for civil conspiracy are
 15 likely to be dismissed because Plaintiff fails to state facts to support the necessary elements of these
 16 claims.

17 Plaintiff also fails to substantively respond to the arguments Defendant presents in its Motion
 18 to Dismiss providing a separate basis for granting Defendant’s Motion to Stay Discovery. *See* ECF
 19 No. 15 and untimely supplement at ECF No. 22. The District of Nevada Local Rule 7-2(d) applies
 20 not only to an opposing party’s failure to file a physical document, but also to failure to assert in an
 21 opposition arguments that oppose those presented in the motion. *Duensing v. Gilbert*, Case No.
 22 2:11-cv-01747-GMN-VCF, 2013 WL 1316890 (D. Nev. Mar. 1, 2013) (failing to respond to
 23 defendant’s arguments on the issue constituting consent to the granting of the motion); *Schmitt v.*
 24 *Furlong*, Case No. 3:11-cv-00602-LRH-VPC, 2013 WL 432632 (D. Nev. Feb. 4, 2013) (failure to
 25 argue against substantive due process violations indicated consent to granting summary judgment);
 26 *Gudenavichene v. Mortgage Elec. Registration Sys.*, Case No. 2:12-cv-83 JCM (GWF), 2012 WL
 27 1142868 (D. Nev. Apr. 4, 2012) (plaintiff’s failure to respond to any of the arguments raised in the
 28 motion to dismiss constituted consent to granting the motion).

1 Finally, the Court finds Defendant's Motion to Stay Discovery can be decided without the
2 need for discovery.

3 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion to Stay Discovery (ECF
4 No. 37) is GRANTED.

5 IT IS FURTHER ORDERED that if the resolution of Defendant's Motion to Dismiss (ECF
6 No. 9) does not result in a complete and final resolution of this case, the parties must each file a
7 proposed discovery plan and scheduling order no later than ten (10) days after the Court's Order
8 issues.

9 DATED this 31st day of October, 2023.

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12 ELAYNA J. YOUCHAK
13 UNITED STATES MAGISTRATE JUDGE
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